

DOCKET FILE COPY ORIGINAL

RECEIVED

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

MAY 1 - 1998

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Competitive Telecommunications Association,)
Florida Competitive Carriers Association, and)
Southeastern Competitive Carriers Association)
) CC Docket No. 98-39
Petition On Defining Certain Incumbent LEC)
Affiliates As Successors, Assigns, or Comparable)
Carriers Under Section 251(h))
of the Communications Act)

COMMENTS OF LCI INTERNATIONAL TELECOM CORP.

LCI International Telecom Corp. ("LCI") respectfully submits these comments on the above-captioned Petition filed by the Competitive Telecommunications Association ("CompTel"), the Florida Competitive Carriers Association ("FCCA"), and the Southeastern Competitive Carriers Association ("SECCA") (collectively "Petitioners"). 1/

LCI strongly supports the Petition and urges that the Commission grant the requested rulings as soon as possible. LCI writes briefly here to explain that the Petition is fully consistent with its own "Fast Track" proposal for separation of RBOC local network and retail service operations. 2/

1/ Public Notice, "Commission Seeks Comment on Petition Regarding Regulatory Treatment of Affiliates of ILECs," CC Docket No. 98-39, DA 98-627 (released Apr. 1, 1998).

2/ See Petition of LCI International Telecom Corp. for Expedited Declaratory Rulings, CC Docket No. 98-5 (filed Jan. 22, 1998) (incorporated in this proceeding by reference).

No. of Copies rec'd
List ABCDE

0+12

DISCUSSION

The Petitioners describe a disturbing new development: attempts by RBOCs to escape the requirements of the Telecommunications Act of 1996 (“1996 Act”) through the formation of “alter ego companies” that they label as “CLECs.” For example, Petitioners describe steps by BellSouth to establish an affiliate, BellSouth BSE, Inc. (“BellSouth BSE”) that will provide local exchange and other services and (following interLATA authorization, long distance services). BellSouth is transferring key resources to BSE and establishing that entity to become the supplier to customers currently served by BellSouth Telecommunications, its current ILEC entity. BellSouth apparently claims that BSE operations should be outside the scope of Section 251 and operate without other dominant carrier regulation applicable to BellSouth’s exchange access and other functions. 3/

LCI strongly agrees with Petitioners that, simply as a matter of law, RBOCs or other ILECs cannot escape their obligations by shuffling operations among affiliates in a corporate shell game. In particular, the Act expressly recognized that ILECs might attempt to create successor operations and argue that those operations are exempt from Section 251(c). The Act prohibited just such evasive maneuvers in Section 251(h).

Already, however, RBOCs are probing the willingness of the Commission to enforce the Act against these alter ego “ILEC-CLECs.” This is not

3/ It is unclear at this time whether BellSouth also will attempt to use BellSouth BSE to evade the structural and non-structural rules otherwise applicable to its interLATA operations under Section 272 of the 1996 Act.

surprising given all the other actions that the RBOCs and other ILECs have taken to avoid complying with the local competition requirements of the 1996 Act. This anticompetitive pattern is predictable, and can be traced directly to the incentives caused by the ILECs' inherent conflict of interest as both retail competitors and as suppliers of the underlying bottleneck network facilities to competitors.

As LCI explained in its "Fast Track" Petition, the best way to promote widespread and sustainable competition is to reduce these conflicts of interests through adequate separation of local network and retail activity. The Fast Track proposal creates this separation by putting RBOC retail service operations in the same shoes as CLEC service providers. LCI proposes a corporate structure including a retail affiliate ("ServeCo") that is fully separated from the entity that operates the incumbent network facilities ("NetCo"), and in which these two entities use no shared facilities, functions, services, employees, or brand names. Under LCI's proposal, the ServeCo affiliate will be partly owned by independent shareholders and managed by fully independent directors and executives, and will obtain access to NetCo's network facilities using the same interconnection arrangements and identical operational support systems ("OSS") as independent CLECs. LCI proposes that a ServeCo affiliate that complies with these guidelines would *not* be subject to the obligations of ILECs under Section 251(h), and would *not* be treated as a dominant carrier. ^{4/}

^{4/} LCI Petition for Expedited Declaratory Rulings, *supra*, at 47-51.

Petitioners here, on the other hand, have identified just the kind of “alter ego” separation that Section 251(h) was designed to prevent. Petitioners describe a situation in which the RBOC *selectively* assigns resources and marketing activity to a parallel affiliate, blends corporate functions, and manages the “alter ego” entity without any independence that would address the conflicts of interest inherent in the RBOC corporate entity. None of the critical “seven minimum” protections proposed by LCI are in place to combat the ILEC’s inherent incentives to thwart their competitors. Unlike the ServeCo proposed by LCI, a so-called CLEC like BellSouth BSE will use the same brand names and other important resources as its ILEC affiliate; will be wholly owned by the same holding company that owns the ILEC operating company; will be run by directors and managers who will not be independent of the ILEC or the holding company and who will have incentives to maximize the overall holding company’s profits; and can be expected to obtain access to the ILEC network (and other operational and maintenance support) that is superior to that provided to independent CLECs.

Under these circumstances, it is predictable that the ILEC and its alter ego “CLEC” affiliate will be managed in a manner that maximizes the total profits of their common holding company, but that harms competitors. For example, the overall holding company might find it advantageous for the “ILEC-CLEC” to engage in predatory pricing of retail offerings, which might benefit the overall holding company by harming competitors or deterring potential entrants, even though on paper it might harm the so-called CLEC entity. Or the holding

company might seek to avoid the ILEC requirement to make network elements available to competitors by directing to the so-called CLEC entity capital investments in advanced facilities, funded by the ILEC's present and future revenue streams. The ILEC will have no incentive to provide other CLECs with access to network elements or other functionality that the alter ego "ILEC-CLEC" either does not want, or is not yet in a position to use. 5/

These potential abuses highlight the importance of the "seven minimum" criteria proposed in LCI's "Fast Track" petition. 6/ LCI is not opposed to the creation of truly independent and completely separated RBOC retail service companies. And we agree that in that case the RBOC retail affiliate should not be treated as a "successor or assign" of the ILEC for purposes of Section 251(h).

However, the alter ego "ILEC-CLECs" identified by the Petitioners are just the opposite -- *they are nothing more than the ILEC in sheep's clothing*. The Commission must prevent such abuses by enforcing Section 251(h) as intended by the Act.

5/ Moreover, the ILEC will provide free resources to its affiliate (such as the valuable corporate goodwill associated with their common brand names) that are unavailable to any other CLEC.

6/ LCI Petition for Expedited Declaratory Rulings, *supra*, at 29-31. CompTel, FCCA, and SECCA indicate that the Commission could establish a "rebuttable presumption" regarding the ILEC-affiliated carriers' status as "successors," "assigns," or "comparable carriers" under Section 251(h). CompTel/FCCA/SECCA Petition at 2 & n.3. In LCI's view, an affiliate that meets the "seven minimum" criteria clearly should be able to rebut such a presumption.


For the foregoing reasons, LCI supports the CompTel/FCCA/SECCA petition and requests that the Commission expeditiously issue the declaratory rulings and/or notice of proposed rulemaking sought by those parties.

Respectfully submitted,

LCI INTERNATIONAL TELECOM CORP.

Anne K. Bingaman
Douglas W. Kinkoph
LCI INTERNATIONAL TELECOM
CORP.
8180 Greensboro Drive, Suite 800
McLean, VA 22102

By: _____

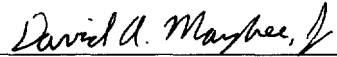

Peter A. Rohrbach
Linda L. Oliver
HOGAN & HARTSON, L.L.P.
Columbia Square
555 Thirteenth Street, N.W.
Washington, D.C. 20004

Counsel for
LCI INTERNATIONAL TELECOM CORP.

Dated: May 1, 1998

CERTIFICATE OF SERVICE

I, David A. Maybee, Jr., hereby certify that on this 1st day of May, 1998, a copy of the Comments of LCI International Telecom Corp. was hand delivered to the parties listed below (except as indicated by asterisks).



David A. Maybee, Jr.

William E. Kennard, Chairman
Federal Communications Commission
1919 M St., N.W., Room 814
Washington, D.C. 20554

Susan Ness, Commissioner
Federal Communications Commission
1919 M St., N.W., Room 832
Washington, D.C. 20554

Harold Furchtgott-Roth, Commissioner
Federal Communications Commission
1919 M St., N.W., Room 802
Washington, D.C. 20554

Michael K. Powell, Commissioner
Federal Communications Commission
1919 M St., N.W., Room 844
Washington, D.C. 20554

Gloria Tristani, Commissioner
Federal Communications Commission
1919 M St., N.W., Room 826
Washington, D.C. 20554

John Nakahata, Chief of Staff
Federal Communications Commission
1919 M St., N.W., Room 814
Washington, D.C. 20554

Thomas Power, Legal Advisor to
Chairman William E. Kennard
Federal Communications Commission
1919 M St., N.W., Room 814
Washington, D.C. 20554

James L. Casserly
Senior Legal Advisor to
Commissioner Susan Ness
Federal Communications Commission
1919 M St., N.W., Room 832
Washington, D.C. 20554

Kevin Martin, Legal Advisor to
Commissioner Harold Furchtgott-Roth
Federal Communications Commission
1919 M St., N.W., Room 802
Washington, D.C. 20554

Kyle D. Dixon, Legal Advisor to
Commissioner Michael Powell
Federal Communications Commission
1919 M St., N.W., Room 844
Washington, D.C. 20554

Paul Gallant, Legal Advisor to
Commissioner Gloria Tristani
Federal Communications Commission
1919 M St., N.W., Room 826
Washington, D.C. 20554

A. Richard Metzger, Jr., Chief
Common Carrier Bureau
Federal Communications Commission
1919 M St., N.W., Room 500
Washington, D.C. 20554

Richard Welch, Deputy Chief
Common Carrier Bureau
Federal Communications Commission
1919 M St., N.W., Room 500
Washington, D.C. 20554

Donald Stockdale
Associate Bureau Chief
Common Carrier Bureau
Federal Communications Commission
1919 M St., N.W., Room 500
Washington, D.C. 20554

Carol Matthey, Chief
Policy and Program Planning Division
Common Carrier Bureau
Federal Communications Commission
1919 M St., N.W., Room 544
Washington, D.C. 20554

Michael Pryor, Deputy Chief
Policy and Program Planning Division
Common Carrier Bureau
Federal Communications Commission
1919 M St., N.W., Room 544
Washington, D.C. 20554

Melissa Newman, Deputy Chief
Policy and Program Planning Division
Common Carrier Bureau
Federal Communications Commission
1919 M St., N.W., Room 544
Washington, D.C. 20554

Lisa Sockett
Policy and Program Planning Division
Common Carrier Bureau
Federal Communications Commission
1919 M St., N.W., Room 544
Washington, D.C. 20554

Janice Myles
Policy and Program Planning Division
Common Carrier Bureau
Federal Communications Commission
1919 M St., N.W., Room 544
Washington, D.C. 20554

Lawrence Strickling, Deputy Chief
Common Carrier Bureau
Federal Communications Commission
1919 M St., N.W., Room 500
Washington, D.C. 20554

International Transcription Service
Federal Communications Commission
1231 20th Street, N.W.
Washington, D.C. 20554

- * Genevieve Morelli, Executive Vice-President
and General Counsel
Competitive Telecommunications Association
1900 M Street, N.W., Suite 800
Washington, D.C. 20036

David L. Sieradzki, Esq.
Hogan & Hartson L.L.P.
Columbia Square
555 Thirteenth Street, N.W.
Washington, D.C. 20004-1109

*First Class Mail